

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)	
)	
EDNA CORNAGGIA)	File No. 50059-CM-P-89
)	
For a Conditional License for a New Multichannel)	
Multipoint Distribution Service (MMDS) Station)	
on the E Group Channels at Gary,)	
Indiana/Chicago, Illinois)	
)	

ORDER ON RECONSIDERATION

Adopted: September 24, 2003

Released: September 25, 2003

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Order on Reconsideration*, we consider a petition for reconsideration filed by Edna Cornaggia (Cornaggia).¹ Cornaggia seeks reconsideration of the March 11, 2002 decision of the Video Services Division of the former Mass Media Bureau dismissing Cornaggia's application for a conditional license for a new Multichannel Multipoint Distribution Service (MMDS) Station WMH513 on the E Group channels at Gary, Indiana/Chicago, Illinois.² For the reasons set forth below, we grant the Petition.

2. *Background.* On September 9, 1983, Cornaggia filed an application for a new MMDS Station on the E Group channels at Chicago, Illinois.³ According to the Commission's licensing records, the application was granted on December 11, 1987. Cornaggia's conditional license required her to construct the station within twelve months of the date of grant.⁴ On June 7, 1988, Cornaggia filed a modification application proposing a change of transmitter location.⁵ On November 14, 1988, the Domestic Facilities Division (Division) of the former Common Carrier Bureau dismissed the modification application because Cornaggia's proposed station was predicted to cause interference to another MMDS station.⁶ The Division also deemed Cornaggia's conditional license to be forfeited because the station was not constructed within the required period.⁷

¹ Petition for Reconsideration (filed Apr. 9, 2002) (Petition).

² Letter from Sharon M. Bertlesen, Supervisory Attorney, MDS Section, Video Services Division, Mass Media Bureau to Edna Cornaggia (dated Mar. 11, 2002) (Dismissal Letter).

³ File No. 3528-CM-P-83.

⁴ Conditional License for Station WDU403.

⁵ File No. 50301-CM-MP-88.

⁶ See Edna Cornaggia, *Order on Reconsideration*, 8 FCC Rcd 5442 (CCB DFD 1993) at ¶ 2.

⁷ *Id.*

3. Cornaggia filed the petition regarding the dismissal of her application. On January 5, 1989, she also filed a second modification application proposing to move her transmitter site to a site in Gary, Indiana.⁸

4. On August 9, 1993, the Division issued the *Order on Reconsideration* denying Cornaggia's reconsideration petition.⁹ The *Order on Reconsideration* had the following discussion concerning the second modification application:

Cornaggia asks that, if her modification application is not reinstated in our consideration of her reconsideration petition, in the alternative, her modification application, as amended by the petition for reconsideration, be treated as newly-filed. However, it is no longer possible to amend an application which has already been dismissed, as Cornaggia's modification was dismissed. Therefore, we will not treat Cornaggia's modification application, File No. 50301-CM-MP-88, as newly-filed. We note that Cornaggia filed a second modification application, File 50059-CM-MP-89, after the forfeiture of her conditional license. However, it is no longer possible to modify an authorization which has been forfeited. Typically, modification applications filed after forfeiture are returned as unacceptable for filing or are dismissed. Because it was filed after forfeiture, in light of VisionAire's request for alternative treatment in its reconsideration petition, we will treat this second application as an initial application, and not as a modification application. The application file number will be changed from 50059-CM-MP-89 to 50059-CM-P-89.¹⁰

5. On March 11, 2002, staff of the Video Services Division, former Mass Media Bureau dismissed Cornaggia's captioned application because its "independent engineering review indicates that the proposed facility fails to provide the interference protection required by the Commission's rules."¹¹ The Dismissal Letter did not identify the station(s) that Cornaggia would interfere with or provide any information regarding the independent engineering review.¹² Cornaggia filed the instant Petition on April 9, 2002.

6. *Discussion.* Cornaggia argues that the Dismissal Letter did not comply with the Administrative Procedure Act because it did not identify the reasons why the application was defective or provide information concerning the staff's engineering analysis.¹³ Based upon the record before us, we conclude that Cornaggia's application should be reinstated. Because the Dismissal Letter did not provide any information concerning the basis for the conclusion that Cornaggia's application did not comply with the interference rules, staff conducted another analysis of Cornaggia's proposal. Based upon that analysis, which was conducted in accordance with the rules in effect at the time Cornaggia's application was filed, and based upon the information available to us at this time, we conclude that Cornaggia's application appears to be in compliance with the applicable interference rules. We therefore reinstate Cornaggia's application.

⁸ File No. 50059-CM-MP-89.

⁹ *Order on Reconsideration*.

¹⁰ *Id.*, 8 FCC Rcd at 5444 n.7. In light of the passage of time, we will not review the propriety of the Division's decision to treat the modification application as an application for a new station. See Steven S. Bosshard D/B/A Bosshard Radio Services, *Memorandum Opinion and Order* 14 FCC Rcd 20586 (1999).

¹¹ Dismissal Letter.

¹² *Id.*

¹³ Petition at 2-3.

7. Accordingly, IT IS ORDERED that pursuant to Section 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405 and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed on April 9, 2002 by Edna Cornaggia IS GRANTED and application File No. BPMD-8950059 IS REINSTATED to pending status.

8. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 405, that the Licensing and Technical Analysis Branch SHALL PROCESS File No. BMPMD-8950059 consistent with the Commission's Rules and this *Order on Reconsideration*.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau